

Senate Bill No. 667

CHAPTER 912

An act to amend Sections 25263, 25264, 25265, 25268, 25318.5, 25323.3, 25324, 25355.2, 25358.4, 25358.5, 25358.7, 25390.3, and 25390.9 of, to add Sections 25310.5, 25319.1, and 25326.3 to, to repeal and add Sections 25319.5 and 25356 of, and to repeal and add Article 8.5 (commencing with Section 25395.20) of Chapter 6.8 of Division 20 of, the Health and Safety Code, relating to hazardous substances, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 667, Sher. Hazardous substances: response actions: orphan sites: brownfield loans.

(1) Under existing law, the Site Designation Committee in the California Environmental Protection Agency is authorized to designate an administering agency for oversight of a remedial action to a hazardous substance release. Any agency, including the administering agency, is authorized to request the committee to convene an advisory team to provide the administering agency with guidance in overseeing the site investigation and remedial action. Existing law requires the administering agency to supervise the site investigation and remedial action conducted by the responsible party and, upon determining that the site investigation and remedial action has been satisfactorily completed, to issue a certificate of completion to the responsible party. Existing law prohibits an agency that has jurisdiction over hazardous materials releases from taking action against the responsible party for the site for which a certificate of completion is issued, except if specified conditions apply to the site.

This bill would specify the procedures for requesting the convening of an advisory committee, and would prescribe the functions and duties of the advisory committee. The bill would provide that the administering agency is the sole agency responsible for determining if any of those conditions apply to a hazardous materials release site for which a certificate of completion has been issued, and would specify related matters.

(2) The Carpenter-Presley-Tanner Hazardous Substance Account Act, which was repealed on January 1, 1999, with certain exceptions, and subsequently reenacted on May 26, 1999, with certain revisions, imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances

Control to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for removal or remedial action under the act. The act authorizes the department to expend the funds in the Toxic Substances Control Account in the General Fund, upon appropriation by the Legislature, to pay for, among other things, removal and remedial actions related to the release of hazardous substances.

This bill would revise the definitions of the terms “operation and maintenance,” “preliminary endangerment assessment,” “response action,” and “state account,” and would define the terms “agency,” “phase I environmental assessment,” and “secretary” for purposes of the act.

(3) The act requires the department or the appropriate California regional water quality control board to direct a responsible party who is required to comply with operation and maintenance requirements to demonstrate and maintain financial assurance, in a specified manner, except as specified.

This bill would exclude from the financial assurance requirement a responsible party that is a federal, state, or local government entity.

(4) The act requires the department to publicly revise, at least annually, a listing of sites subject to the act and to categorize and place the sites on one of 3 lists.

This bill would instead require the department to assign each site to one of 2 tiers, based upon specified criteria and the extent that the deferral of a response action would result in specified costs or risks. The department would be required to expend any funds appropriated to the department for a response action, and to take a response action, in conformance with the assignment of sites to those priority tiers, except as specified. The bill would provide that the department or, if appropriate, the regional board, is the state agency with the sole responsibility for ensuring that required action to a release at a listed site is carried out in compliance with the act.

(5) The act requires the department and the regional board to provide specified information to the affected community and to develop a public participation work plan. The act requires the department and the State Water Resources Control Board to create 2 community service offices, by July 1, 2000, to perform specified duties.

This bill would require the department or the regional board to inform the public of the existence of a listed site and its intention to conduct a response action at the site. The bill would require the department or regional board to develop a public participation plan and would make conforming changes.

(6) The act exempts, from various contracting requirements, a removal or remedial action taken or contracted by the department under specified emergency conditions or when there is an imminent

or substantial endangerment to the public health or welfare of the environment.

This bill would additionally exempt such a removal action from the requirement that the Department of General Services approve contracts for the hiring or purchase of equipment, supplies, materials, or services, the construction, alteration, improvement, repair or maintenance of property, and the performance of work or services in cooperation with any person or public body.

(7) Under existing law, the administrator of the Orphan Share Reimbursement Trust Fund in the State Treasury is authorized to expend the money in that fund, upon appropriation by the Legislature, for specified purposes, including the reimbursement of the orphan share of a site, as defined. Under existing law, these provisions establishing the fund and the related provisions do not become operative until the operative date of a statute that becomes operative on or after January 1, 2000, creates a position in state government known as the Administrator of the Orphan Share Reimbursement Trust Fund to be appointed by the Governor and subject to confirmation by the Senate, and either appropriates funds to implement those provisions or establishes a revenue source for the fund, or both.

This bill would revise the conditions for the operation of the orphan fund act. The bill would make other technical changes to the orphan fund act.

(8) Existing law transferred \$85,000,000 from a prescribed item of the Budget Act of 2000 to the Cleanup Loans and Environmental Assistance to Neighborhoods Account, which is established in the General Fund, and appropriated \$500,000 from that account to the department for program development related to the redevelopment of contaminated properties known as brownfields for the 2000–01 fiscal year.

This bill would require the department, with the approval of the Secretary for Environmental Protection, to establish the Investigating Site Contamination Program to provide loans to conduct preliminary endangerment assessments of brownfields and underutilized property, as defined, and the Cleanup Loans and Environmental Assistance to Neighborhoods Program (CLEAN), to provide loans to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property. The bill would specify procedures for the approval of, and repayment of, a loan under these programs.

The bill would repeal and reenact the Cleanup Loans and Environmental Assistance to Neighborhoods Account in the General Fund and would continuously appropriate the money in the account to the department to provide loans under those programs, except that the bill would provide that the department and the agency may



expend funds in the account for administration only upon the appropriation of funds for that purpose.

The bill would transfer the \$85,000,000 in the existing account to the account established by this bill. This bill would appropriate \$2,000,000 from that account to the Department of Toxic Substances Control to implement the loan programs.

The bill would require the secretary to submit a report to the Joint Legislative Budget Committee and specified policy committees, and to post the report on the agency's Internet web site, once every 2 years regarding the loan programs.

(9) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) (1) There are thousands of brownfields and underutilized properties in California where redevelopment has been stymied due to real or perceived hazardous materials contamination.

(2) Because of the reluctance of private developers, local governments, and schools to redevelop these urban properties, the location of new development tends to be at the edges of urban areas, because those areas are generally perceived to entail lesser potential for contamination and liability for cleanup costs.

(3) This has resulted in a multitude of problems, including urban sprawl, decaying inner-city neighborhoods and schools, public health and environmental risks stemming from contaminated properties, reduced inner-city tax bases, and an increased need for major infrastructure improvements, such as streets, highways, and sewer systems to service the urban fringe areas while the inner-city infrastructure deteriorates.

(4) One of the primary reasons that these urban properties are not redeveloped for beneficial use is that potential redevelopers are hesitant to expend funds to determine whether a property is contaminated, and if so, how much it would cost to remediate the site. Some potential redevelopers are also not able to secure conventional financing to remediate contaminated properties.

(b) The Legislature hereby recognizes that it is in the best interests of the people of California that state funds be made available to stimulate the redevelopment of brownfields and underutilized properties, if this redevelopment will result in the overall improvement of the community where the property is located and there is a reasonable economic or social return on these investments, by providing low-interest loans to qualified applicants for the

purpose of funding site investigations, and other response actions at brownfields and underutilized properties.

SEC. 2. Section 25263 of the Health and Safety Code is amended to read:

25263. (a) Any agency, including the administering agency, may request the committee at any time to convene an advisory team for the purpose of providing the administering agency with guidance in overseeing the site investigation and remedial action at a hazardous materials release site. If the request is made by an agency other than the administering agency, the request shall be in writing, and shall specify any issue that is of concern to the requesting agency, the requirements of the laws, ordinances, regulations, or standards that are related to the issue, and the manner in which the administration or implementation of those requirements by the administering agency has raised the issue concerning the site investigation or remedial action at the hazardous materials release site. The committee shall create such an advisory team within 30 calendar days of the date of receipt of the request and shall designate the members of the advisory team after consulting with interested agencies. The advisory team shall be chaired by the representative of the agency that requested the advisory team to be convened and shall meet within five working days of the date that any agency requests a meeting. A representative of the administering agency shall attend all advisory team meetings.

(b) The advisory team may only take action to ensure that the administering agency has adequate information concerning the requirements of applicable laws, ordinances, regulations, or standards to address, in an appropriate and correct manner, any issue that led to the request for, and the convening of, the advisory team. To carry out this function, the advisory team shall do all of the following:

(1) Define, in a specific manner, any issue related to the site investigation and remedial action that led to the request to convene the advisory team.

(2) Determine the application of the laws, ordinances, regulations, and standards related to that issue that are applicable to, and govern, the site investigation and remedial action.

(3) Make recommendations to the administering agency concerning the manner in which the applicable laws, ordinances, regulations, and standards should be administratively applied to appropriately and correctly resolve the issue.

(c) An agency, other than the administering agency, that is a member of the advisory team shall be eligible for reimbursement of oversight costs related to its participation on the advisory team from the responsible party for the hazardous materials release site only if all of the following apply:

(1) The issue that led to the request to convene the advisory team, or the issue that is considered by the advisory committee following its formation, is directly and materially related to the administration of a law, ordinance, regulation, or standard for which the agency has actual statutory or administrative responsibility.

(2) The administering agency certifies that the agency is not able to address the issue without a significant expenditure of personnel time or other resources, or certifies that the issue is related to potential risks to human health or safety or the environment of sufficient significance to warrant reimbursement of the agency's oversight expenditures.

(3) Either of the following applies:

(A) The responsible party agrees to reimburse the agency's oversight expenditures.

(B) The committee directs the responsible party or responsible parties to reimburse the agency's oversight expenditures.

(d) Subdivision (c) does not affect the authority of the administering agency to recover oversight costs in accordance with applicable law.

SEC. 3. Section 25264 of the Health and Safety Code is amended to read:

25264. (a) The administering agency for a hazardous materials release site shall supervise all aspects of a site investigation and remedial action conducted by the responsible party and, for that purpose, the administering agency shall, notwithstanding any other provision of law, including, but not limited to, this division and Division 7 (commencing with Section 13000) of the Water Code, have sole jurisdiction over all activities that may be required to carry out a site investigation and remedial action necessary to respond to the hazardous materials release at the site. For purposes of this chapter, the administering agency shall do all of the following:

(1) Administer all state and local laws, ordinances, regulations, and standards that are applicable to, and govern, the activities involved with the site investigation and remedial action at the site.

(2) Determine the adequacy of site investigation and remedial action activities at the site and the extent to which the activities comply, or fail to comply, with applicable state and local laws, ordinances, regulations, and standards. In making these determinations, the administering agency shall consult with the advisory team if one has been convened pursuant to Section 25263.

(3) Issue permits or other forms of authorization that may be required by state and local laws, ordinances, and regulations and that are necessary to undertake activities related to the site investigation and remedial action at the site. Before issuing a permit or other authorization pursuant to this paragraph, the administering agency shall consult with the appropriate agency and ensure that required

procedures are followed and adequate permit requirements and conditions are imposed.

(b) Upon determining that a site investigation and remedial action at a hazardous materials release site has been satisfactorily completed and that a permanent remedy to the release has been accomplished, the administering agency shall issue the responsible party a certificate of completion. The certificate shall describe the release of hazardous materials that was the subject of the remedial action and the remedial action that was taken and shall certify that applicable remedial action standards and objectives were achieved.

(c) Except as otherwise provided in Section 25265 and this subdivision, the issuance of a certificate of completion by the administering agency shall constitute a determination that the responsible party has complied with the requirements of all state and local laws, ordinances, regulations, and standards that are applicable to the site investigation and remedial action for which the certificate is issued. No agency that has jurisdiction over hazardous materials releases pursuant to those state and local laws, ordinances, or regulations may take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued. The administering agency may not take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued unless one of the following applies:

(1) Monitoring, testing, or analysis of the hazardous materials release site subsequent to the issuance of the certificate of completion indicates that the remedial action standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remedial action or certificate of completion are violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action or certificate of completion for the site are not adequately funded or are not properly carried out.

(4) A hazardous materials release is discovered at the site that was not the subject of the site investigation and remedial action for which the certificate of completion was issued.

(5) A material change in the facts known to the administering agency at the time the certificate of completion was issued, or new facts, causes the administering agency to find that further site investigation and remedial action are required in order to prevent a significant risk to human health and safety or to the environment.



(6) The responsible party induced the administering agency to issue the certificate of completion by fraud, negligent or intentional nondisclosure of information, or misrepresentation.

(d) (1) Except as provided in Section 25265, the administering agency shall be the sole agency responsible for determining if any of the conditions described in paragraphs (1) through (6), inclusive, of subdivision (c) are applicable to a hazardous materials release site for which a certificate of completion has been issued pursuant to subdivision (b), and for taking any action that is deemed necessary if that determination is made. Any agency, other than the administering agency, that has information that any of those conditions applies to the hazardous materials site shall provide the administering agency with that information and the administering agency shall, within 45 calendar days of receipt of the request, do all of the following:

(A) Determine whether the condition is applicable.

(B) If it is applicable, determine if further action at the site is warranted.

(C) If further action is warranted, take further action at the site as may be necessary.

(2) If the administering agency fails, or refuses, to act properly or in a timely manner, as required by this subdivision, the agency that provided the information to the administering agency may petition the committee for review in accordance with Section 25265. The decision of the committee shall be final, and shall not be subject to judicial review.

SEC. 4. Section 25265 of the Health and Safety Code is amended to read:

25265. (a) Any agency may petition the chairperson of the committee at any time to review any of the following:

(1) The manner in which the administering agency is implementing state and local laws, ordinances, regulations, and standards applicable to the site investigation and remedial action that is being carried out by the responsible party at a hazardous materials release site.

(2) The decision to issue a certificate of completion for the site.

(3) The failure, or refusal, of the administering agency to act properly or in a timely manner pursuant to subdivision (d) of Section 25264.

(b) The petition specified in subdivision (a) shall state the reasons why the review is warranted, the basis for believing that applicable state and local laws, ordinances, regulations, and standards are not being implemented properly, or the grounds for objecting to the issuance of a certificate of completion.

(c) (1) The committee shall review the petition submitted pursuant to subdivision (a), consult with the petitioning and administering agencies, and make a decision regarding the validity



of the petition within 30 calendar days of the date the petition is received.

(2) If the committee finds that the petition is not valid, it shall deny the petition. If it finds that the administering agency is not properly implementing a state or local law, ordinance, regulation, or standard, the administering agency shall be divested of exclusive jurisdiction over the implementation of that law, ordinance, regulation, or standard and the jurisdiction shall revert to the appropriate agency.

(3) If the committee finds that there are valid grounds for objecting to the issuance of a certificate of completion, the committee shall specify the actions that the responsible party and the administering agency shall be required to take before the certificate may be issued.

(4) If the committee determines that the administering agency has not acted properly or in a timely manner pursuant to subdivision (d) of Section 25264, the committee shall determine whether one or more of the conditions described in paragraphs (1) through (6), inclusive, of subdivision (c) of Section 25264 applies to the hazardous materials release site for which a certificate of completion has been issued pursuant to subdivision (b) of Section 25264. If the committee makes a determination pursuant to this paragraph, the committee shall require the administering agency to take any further action at the site that is necessary to address the condition or designate another administering agency to take the necessary action.

(d) Nothing in this section shall be construed to affect or limit the jurisdiction of the administering agency in connection with the administration of any state or local law, ordinance, regulation, or standard that has not been challenged under this section.

SEC. 5. Section 25268 of the Health and Safety Code is amended to read:

25268. Nothing in this chapter shall be construed as infringing on the right of any agency to obtain from the administering agency for a site the information that may be necessary for the agency to carry out its responsibilities under this chapter, including, but not limited to, its responsibilities under Section 25263, subdivisions (a), (c) and (d) of Section 25264, and Section 25265.

SEC. 6. Section 25310.5 is added to the Health and Safety Code, to read:

25310.5. “Agency” means the California Environmental Protection Agency.

SEC. 7. Section 25318.5 of the Health and Safety Code is amended to read:

25318.5. “Operation and maintenance” means those activities initiated or continued at a hazardous substance release site following completion of a response action that are deemed necessary by the department or regional board in order to protect public health or



safety or the environment, to maintain the effectiveness of the response action at the site, or to achieve or maintain the response action standards and objectives established by the final remedial action plan or final removal action work plan applicable to the site.

SEC. 8. Section 25319.1 is added to the Health and Safety Code, to read:

25319.1. “Phase I environmental assessment” means a preliminary assessment of a property to determine whether there has been, or may have been, a release of a hazardous substance based on reasonably available information about the property and general vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records, current and historical land uses, prior releases of a hazardous material, data base searches, reviews of relevant files of federal, state, and local agencies, visual and other surveys of the property and general vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of a phase I environmental assessment.

SEC. 9. Section 25319.5 of the Health and Safety Code is repealed.

SEC. 10. Section 25319.5 is added to the Health and Safety Code, to read:

25319.5. “Preliminary endangerment assessment” means an activity that is performed to determine whether current or past hazardous substance management practices have resulted in a release or threatened release of a hazardous substance that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the department entitled “Preliminary Endangerment Assessment: Guidance Manual,” or as those guidelines may be amended by the department. A preliminary endangerment assessment includes all of the following activities:

- (a) Sampling and analysis of a site.
- (b) A preliminary determination of the type and extent of hazardous material contamination of a site.
- (c) A preliminary evaluation of the risks the hazardous materials contamination of a site may pose to public health or the environment.

SEC. 11. Section 25323.3 of the Health and Safety Code is amended to read:

25323.3. “Response,” “respond,” or “response action” have the same meanings as defined in Section 9601(25) of the federal act (42 U.S.C. Sec. 9601(25)). The enforcement and oversight activities of the department and regional board are included within the meaning of “response,” “respond,” or “response action.”

SEC. 12. Section 25324 of the Health and Safety Code is amended to read:



25324. (a) “State account” means the Toxic Substances Control Account established pursuant to Section 25173.6, except as follows:

(1) For purposes of Section 25334 and Article 7.5 (commencing with Section 25385), “state account” means the Hazardous Substance Account established pursuant to Section 25330.

(2) For purposes of Section 25330.2, “state account” means the Site Remediation Account established pursuant to Section 25337.

(b) Notwithstanding any other provision of this section, any costs incurred and payable from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site Remediation Account prior to July 1, 1998, to implement this chapter, as it read prior to January 1, 1999, or Chapter 6.85 (commencing with Section 25396), shall be recoverable from the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable from the state account.

SEC. 13. Section 25326.3 is added to the Health and Safety Code, to read:

25326.3. “Secretary” means the Secretary for Environmental Protection.

SEC. 14. Section 25355.2 of the Health and Safety Code is amended to read:

25355.2. (a) Except as provided in subdivision (c), the department or the regional board shall require any responsible party who is required to comply with operation and maintenance requirements as part of a response action, to demonstrate and to maintain financial assurance in accordance with this section. The responsible party shall demonstrate financial assurance prior to the time that operation and maintenance activities are initiated and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities.

(b) (1) For purposes of subdivision (a), the responsible party shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) As an alternative to the requirement of paragraph (1), a responsible party may demonstrate and maintain financial assurance by means of a financial assurance mechanism other than those listed in paragraph (1), if the alternative financial assurance mechanism has been submitted to, and approved by, the department or the regional board as being at least equivalent to the financial assurance mechanisms specified in paragraph (1). The department or the regional board shall evaluate the equivalency of the proposed alternative financial assurance mechanism principally in terms of the certainty of the availability of funds for required operation and maintenance activities and the amount of funds that will be made available. The department or the regional board shall require the responsible party to submit any information necessary to make a



determination as to the equivalency of the proposed alternative financial assurance mechanism.

(c) The department or the regional board shall waive the financial assurance required by subdivision (a) if the department or the regional board makes one of the following determinations:

(1) The responsible party is a small business and has demonstrated all of the following:

(A) The responsible party cannot qualify for any of the financial assurance mechanisms set forth in subdivisions (b), (c), and (d) of Section 66265.143 of Title 22 of the California Code of Regulations.

(B) The responsible party financially cannot meet the requirements of subdivision (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

(C) The responsible party is not capable of meeting the eligibility requirements set forth in subdivision (e) of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) The responsible party is a small business and has demonstrated that the responsible party financially is not capable of establishing one of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations while at the same time financing the operation and maintenance requirements applicable to the site.

(3) The responsible party is not separately required to demonstrate and maintain a financial assurance mechanism for operation and maintenance activities at a site because of all of the following conditions:

(A) The site is a multiple responsible party site.

(B) Financial assurance that operation and maintenance activities at the site will be carried out is demonstrated and maintained by a financial assurance mechanism established jointly by all, or some, of the responsible parties.

(C) The financial assurance mechanism specified in subparagraph (B) meets the requirements of subdivisions (a) and (b).

(4) The responsible party is a federal, state, or local government entity.

(d) The department or the regional board shall withdraw a waiver granted pursuant to paragraph (1) or (2) of subdivision (c) if the department or the regional board determines that the responsible party that obtained the waiver no longer meets the eligibility requirements for the waiver.

(e) Notwithstanding Section 7550.5 of the Government Code, on or before January 15, 2001, the department shall report to the Legislature all of the following:

(1) The number of requests the department and the regional boards have received for waivers from the financial assurance

requirements of this section during the period between May 26, 1999, and January 1, 2001.

(2) The disposition of the requests that were received and the reasons for granting the waivers that were allowed and rejecting the waivers that were disallowed.

(3) The total number of businesses or other entities that were required by this section to demonstrate and maintain financial assurance, the number of businesses or other entities that were able to comply with the requirement, the number that were unable to comply and the reasons why they could not or did not comply, and the history of compliance with this chapter and Chapter 6.5 (commencing with Section 25100) by responsible parties that requested waivers.

(4) Financial assurance mechanisms other than the financial assurance mechanisms referenced in paragraph (1) of subdivision (b) that may be available to responsible parties.

(f) For purposes of this section, “small business” is a business that meets the requirements set forth in subdivision (d) of Section 14837 of the Government Code.

SEC. 15. Section 25356 of the Health and Safety Code is repealed.

SEC. 16. Section 25356 is added to the Health and Safety Code, to read:

25356. (a) (1) The department shall adopt, by regulation, criteria for the selection of hazardous substance release sites for a response action under this chapter. The criteria shall take into account pertinent factors relating to public health, safety and the environment, which shall include, but are not necessarily limited to, potential hazards to public health, safety or the environment, the risk of fire or explosion, and toxic hazards, and shall also include the criteria established pursuant to Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)).

(2) The criteria adopted pursuant to paragraph (1) may include a minimum hazard threshold, below which sites shall not be listed pursuant to this section, if the sites are subject to the authority of the department to order a response action, or similar action, pursuant to Chapter 6.5 (commencing with Section 25100).

(b) (1) The department shall publish and revise, at least annually, a listing of the hazardous substance release sites selected for, and subject to, a response action under this chapter. The department shall list the sites based upon the criteria adopted pursuant to subdivision (a) and the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at the site or in a significant increase in risk to human health or safety or the environment.

(2) The list of sites established pursuant to this subdivision shall be published by the department and made available to the public or any interested person upon request and without cost. The department

shall list sites alphabetically within each priority tier, as specified in subdivision (c), and shall update the list of sites at least annually to reflect new information regarding previously listed sites or the addition of new sites requiring response actions.

(c) The department shall assign each site listed pursuant to subdivision (b) to one of the following priority tiers for the purpose of informing the public of the relative hazard of listed sites:

(1) “Priority tier one” shall include any site that the department determines, using the criteria described in subdivision (b), meets any of the following conditions:

(A) The site may pose a known or probable threat to public health or safety through direct human contact.

(B) The site may pose a substantial probability of explosion or a fire or a significant risk due to hazardous air emissions.

(C) The site has a high potential to contaminate or to continue to contaminate groundwater resources that are present or possible future sources of drinking water.

(D) There is a risk that the costs of a response action will increase rapidly or risks to human health or safety or the environment will increase significantly if response action is deferred.

(2) “Priority tier two” shall include any site that poses a substantial but less immediate threat to public health or safety or the environment and any site that will require a response action, but presents only a limited and defined threat to human health or safety or the environment. Priority tier two may contain sites previously listed in priority tier one if the department determines that direct threats to human health or safety have been removed and if physical deterioration of the site has been stabilized so that threats to the environment are not significantly increasing.

(d) Hazardous substance release sites listed by the department pursuant to subdivision (b) are subject to this chapter and all actions carried out in response to hazardous substance releases or threatened releases at listed sites shall comply with the procedures, standards, and other requirements set forth in this chapter or established pursuant to the requirements of this chapter.

(e) (1) The adoption of the minimum hazard threshold pursuant to paragraph (2) of subdivision (a), the department’s development and publication of the list of sites pursuant to subdivision (b), and the assignment of sites to a tier pursuant to subdivision (c), including the classification of a site as within a minimum threshold pursuant to subdivision (c), are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The adoption of the criteria used by the department pursuant to subdivision (b) to determine the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at a site or in a significant increase in risk

to human health or safety or the environment is subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) (1) Except as provided in paragraph (2), the department shall expend all funds appropriated to the department for any response action pursuant to this chapter, and shall take all response action pursuant to this chapter, in conformance with the assignment of sites to priority tiers pursuant to subdivision (c).

(2) The department may expend funds appropriated for a response action and take a response action, without conforming to the listing of sites by tier pursuant to subdivision (c), or at a site that has not been listed pursuant to subdivision (b), if any of the following apply:

(A) The department is monitoring a response action conducted by a responsible party at a site listed pursuant to subdivision (b) or at a site that is not listed but is being voluntarily remediated by a responsible party or another person.

(B) The expenditure of funds is necessary to pay for the state share of a response action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(C) The department is assessing, evaluating, and characterizing the nature and extent of a hazardous substance release at a site for which the department has not been able to identify a responsible party, the responsible party is defunct or insolvent, or the responsible party is not in compliance with an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5.

(D) The department is carrying out activities pursuant to paragraph (2) or (3) of subdivision (b) of, or subdivision (c) or (d) of, Section 25355.5.

(3) The department may, at any one time, expend funds and take a response action at more than one site on the list established pursuant to subdivision (b). In addition, the department may, at any one time, oversee the performance of any activities conducted by a responsible party on more than one site on the list established pursuant to subdivision (b).

(g) This section does not require the department to characterize every site listed pursuant to subdivision (b) before the department begins response actions at those sites.

(h) The department, or, if appropriate, the California regional water quality board, is the state agency with sole responsibility for ensuring that required action in response to a hazardous substance release or threatened release at a listed site is carried out in compliance with the procedures, standards, and other requirements set forth in this chapter, and shall, as appropriate, coordinate the involvement of interested or affected agencies in the response action.

SEC. 17. Section 25358.4 of the Health and Safety Code is amended to read:

25358.4. The analysis of any material that is required to demonstrate compliance with this chapter shall be performed by a laboratory accredited by the State Department of Health Services pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

SEC. 18. Section 25358.5 of the Health and Safety Code is amended to read:

25358.5. Any removal or remedial action taken or contracted by the department pursuant to Section 25354 or subdivision (a) of Section 25358.3 shall be exempt from all of the following provisions:

(a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(c) Section 10295 of, and Article 4 (commencing with Section 10335) of, and Article 5 (commencing with Section 10355) of, Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 19. Section 25358.7 of the Health and Safety Code is amended to read:

25358.7. (a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Section 25356.

(b) The department, or the regional board, as appropriate, shall inform the public, and in particular, persons living in close proximity to a hazardous substance release site listed pursuant to Section 25356, of the existence of the site and the department's or regional board's intention to conduct a response action at the site, and shall conduct a baseline community survey to determine the level of public interest and desire for involvement in the department's or regional board's activities, and to solicit concerns and information regarding the site from the affected community. Based on the results of the baseline survey, the department or regional board shall develop a public participation plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

(c) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Section 25356 with the opportunity to participate in the department's or regional board's decisionmaking process regarding that action by taking all of the following actions:



(1) Provide access to information which the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:

(A) Trade secrets, as defined in subdivision (a) of Section 25358.2.

(B) Business financial data and information, as specified in subdivision (c) of Section 25358.6.

(C) Information which the department or regional board is prohibited from releasing pursuant to any state or federal law.

(2) Provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned activities. The factsheets shall be made available in languages other than English if appropriate.

(3) Provide notification, upon request, of any public meetings held by the department or regional board concerning the action.

(4) Provide the opportunity to attend and to participate at those public meetings.

(5) Based on the results of the baseline community survey, provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(d) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this chapter and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(e) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this chapter, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(f) This section does not apply to emergency actions taken pursuant to Section 25354.

SEC. 20. Section 25390.3 of the Health and Safety Code is amended to read:

25390.3. (a) The Orphan Share Reimbursement Trust Fund is hereby created in the State Treasury.

(b) The administrator of the fund may expend the money deposited in the fund as provided in this article, upon appropriation by the Legislature. The administrator of the fund shall act in a fiduciary capacity, shall prudently administer the fund, and shall protect the fund from any unreasonable or unjustified claims, including any unreasonable or unjustified determinations of the orphan share percentage.

(c) Except as provided in subdivision (d) and subdivision (b) of Section 25358.7.2, the administrator of the fund may expend the money in the fund for all of the following purposes:

(1) To pay claims for reimbursement of all, or any part of, the orphan share at a site paid by the responsible party filed pursuant to Section 25390.4.

(2) For the costs of implementing this article.

(3) To pay the reasonable costs of the department and the regional board for performance of its duties under this article, including, but not limited to, its participation in the orphan share determination process set forth in Section 25390.5, unless those costs are paid by a potentially responsible party under an agreement specified in paragraph (3) of subdivision (a) of Section 25390.4. The expenditures from the fund for purposes of this paragraph shall not exceed 5 percent of the total amount appropriated from the fund in the annual Budget Act for purposes of this subdivision for that fiscal year.

(4) To pay the portion of costs attributable to the orphan share incurred by the department and the regional boards to oversee actions of potentially responsible parties, unless those costs are paid by a potentially responsible party under an agreement specified in paragraph (3) of subdivision (a) of Section 25390.4.

(d) If an appropriation from the General Fund is made to the fund in any fiscal year and an amount greater than five million dollars (\$5,000,000) in unexpended funds, beyond any amount approved by the administrator of the fund to pay claims pursuant to this article from that General Fund appropriation, remain in the fund at the end of that fiscal year, and if the department determines that additional funding for orphan sites beyond that appropriated from the Toxic Substances Control Account is required for the next fiscal year, the administrator may expend the amount in excess of five million dollars (\$5,000,000) from the General Fund appropriation to pay for response costs incurred by the department or the regional boards under this chapter at sites listed pursuant to Section 25356 where no viable responsible parties exist.

SEC. 21. Section 25390.9 of the Health and Safety Code is amended to read:

25390.9. (a) This article shall become operative on the operative date of the statute that does either, or both, of the following:

- (1) Appropriates funds to the fund to implement this article.
- (2) Establishes a revenue source for the fund.

(b) Notwithstanding subdivision (a), the operation of this article shall be suspended during any fiscal year in which both no funds are appropriated to the fund to implement this article and no revenue source for the fund is operative.

SEC. 22. Article 8.5 (commencing with Section 25395.20) of Chapter 6.8 of Division 20 of the Health and Safety Code, as added by Chapter 144 of the Statutes of 2000, is repealed.

SEC. 23. Article 8.5 (commencing with Section 25395.20) is added to Chapter 6.8 of Division 20 of the Health and Safety Code, to read:

Article 8.5. Cleanup Loans and Environmental Assistance to
Neighborhoods

25395.20. (a) For purposes of this article, the following definitions shall apply:

(1) “Account” means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b).

(2) (A) “Brownfield” means property that meets all of the following conditions:

(i) It is located in an urbanized area.

(ii) It was previously the site of an economic activity that is no longer in operation at that location.

(iii) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this article.

(B) “Brownfield” does not include any of the following:

(i) Property listed, or proposed for listing, on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(3) “Cleanup Loans and Environmental Assistance to Neighborhoods Program” or “CLEAN” means the loan program established by the department pursuant to Section 25395.22, to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

(4) “Economic activity” means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

(5) “Eligible property” means a site that is either of the following:

(A) A brownfield.

(B) An underutilized property that is any of the following:

(i) A property described in clause (v) of subparagraph (D) of paragraph (11).

(ii) A property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined by the Trade and Commerce Agency pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(iii) A property, the redevelopment of which will result in any of the following:

(I) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(II) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(III) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(IV) Housing that is affordable to very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(V) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(C) “Eligible property” does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(6) (A) “Hazardous material” means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. “Hazardous material” includes, but is not limited to, all of the following:

(i) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(ii) A hazardous waste, as defined in Section 25117.

(iii) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(B) “Hazardous material” does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

(7) “Investigating site contamination program” means the loan program established by the department pursuant to Section 25395.21 to conduct a preliminary endangerment assessment of an underutilized urban property.

(8) “No longer in operation” means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

(9) “Project” means any response action, and the planned future development, included in an application for a loan pursuant to Section 25395.22.

(10) “Property” means real property, as defined in Section 658 of the Civil Code.

(11) “Underutilized property” means property that meets all of the following conditions:

(A) It is located in an urbanized area.

(B) An economic activity is conducted on the property.

(C) It is the subject of a proposal for development pursuant to this article.

(D) One of the following applies:

(i) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(ii) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(iii) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(iv) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(v) The property is adjacent to one or more brownfields that are the subject of a project under this article and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields occurs.

(E) An underutilized property does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(12) “Urbanized area” has the same meaning as set forth in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(b) The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this article. All of the following moneys shall be deposited in the account:

(1) Funds appropriated by the Legislature for the purposes of this article.

(2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(3) Proceeds from loan repayments.

(4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

(c) (1) Except as provided in paragraph (2), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Sections 25395.21 and 25395.22.

(2) The money in the account may be expended by the department and the agency for the administration of this article only upon appropriation by the Legislature in the annual Budget Act or in another measure.

25395.21. (a) The department, with the approval of the secretary, shall establish an Investigating Site Contamination Program to provide loans to eligible persons to conduct preliminary endangerment assessments of brownfields and underutilized properties. A loan provided pursuant to this section shall not be used for the cost of a phase I environmental assessment or the department’s oversight of the preparation and approval of the preliminary endangerment assessment.

(b) The department shall develop a loan application form for an investigating site contamination program loan and shall include, in the form, any provisions that the department considers to be appropriate. The application form shall be signed by the loan applicant and shall be submitted to the department with all of the following documentation:

(1) The phase I environmental assessment for the property that is the subject of the loan application.

(2) Information that demonstrates that the property is a brownfield or an underutilized property.



(3) If the owner of the property that is the subject of the loan application is not the loan applicant, documentation that demonstrates that the owner consents to the performance of the preliminary endangerment assessment of the property.

(4) If the owner of the property that is the subject of the loan application is not the loan applicant, a copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(5) Any other information the department deems necessary.

(c) The department shall determine whether to approve a loan application pursuant to this section based upon the information submitted pursuant to subdivision (b). In making a decision regarding whether to approve a loan application, the department shall approve a loan pursuant to this section for a property only if the department determines the property is a brownfield or an underutilized property.

(d) The maximum amount of a loan granted pursuant to this section shall not exceed one hundred thousand dollars (\$100,000).

(e) Except as provided in subdivision (f), upon approval of the loan application by the department, the loan recipient shall execute an agreement with the department to repay the loan over a period not to exceed two years. The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the loan application, any money so recovered shall be used first to repay the loan or repay the grant.

(f) If a loan recipient who is not the owner of the property and the department determine, after the completion of the preliminary endangerment assessment, that the sum of the cost of remediation and the property purchase price makes the redevelopment of the property not economically feasible, the department may waive the repayment of up to 75 percent of the loan, and the amount waived shall be deemed a grant to the loan recipient. If the department waives the repayment of part of the loan, the recipient shall repay the remaining portion of the loan within one year of that waiver.

(g) Upon approval of a loan, the recipient shall enter into an agreement with the department for the department to provide regulatory oversight of the preparation and approval of the preliminary endangerment assessment.

25395.22. (a) The department, with the approval of the secretary, shall establish a Cleanup Loans and Environmental Assistance to Neighborhoods Program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property. The department shall take those necessary actions to promote the use of loans under the CLEAN program by local governments. A loan provided pursuant to this section shall not be used to pay for a phase

I environmental assessment, a preliminary endangerment assessment, the department's oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site.

(b) The department shall develop an application form for a loan under the CLEAN program and shall include, in the form, any provisions that the department determines to be appropriate to carry out the CLEAN program. The application shall be signed by the loan applicant and shall be accompanied by all of the following:

(1) A preliminary endangerment assessment that has been approved by the department, or an environmental assessment with equivalent information, that discloses the presence of a release or threatened release of a hazardous material at the property at concentrations that may pose a risk to public health and safety and the environment.

(2) The name and address of the project coordinator for the site and the resumé of the coordinator that demonstrates that the coordinator possesses the requisite qualifications to manage the response action at the site.

(3) Documentation that the property is an eligible property and, if the department has implemented the priority scoring system set forth in Section 25395.23, sufficient information to enable the department to determine the priority score for the property.

(4) Documentation that the planned future development of the site is consistent with the current and reasonably foreseeable future land uses of the property.

(5) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, documentation that demonstrates that the owner agrees to use the property as a security interest for the loan to finance necessary response action at the property.

(6) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, a copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(7) Any other information the department deems necessary.

25395.23. (a) The department, after consultation with the secretary, the Secretary of the Trade and Commerce Agency, the Secretary of the Business, Transportation and Housing Agency, and the Director of the Office of Planning and Research, may approve loan applications submitted pursuant to Section 25395.22. The department may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property.

(b) If the department determines, based on estimates of the number of loan requests that will be submitted in any fiscal year and

the amount of loan funds that will be available during that fiscal year, that sufficient funding to meet the demand for loans will not be available, the department shall establish a system for ranking loan applications based on priority scores. Priority scores shall be calculated for each loan application by scoring the project that is the subject of the loan application using scales that measure the factors listed in subdivision (c). The department shall approve loans for a project based on its priority scores.

(c) The system for ranking loan applications pursuant to subdivision (b) shall establish priority scores for projects that are the subjects of the loan applications using scales that measure all of the following factors:

(1) The degree of community support expressed for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.

(2) Financial support for the project provided at the local level, including grants or other subsidies, and funding provided by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Division 2 of Part 1 of Title 5 of the Government Code) or financing under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).

(3) The potential for the project to provide additional protection of the public health and safety.

(4) The potential for the project to enhance strategic community development, including, but not limited to, all of the following:

(A) The creation of new jobs.

(B) Generation of additional tax revenue.

(C) The likelihood that the project will stimulate additional redevelopment in adjacent areas.

(D) The degree to which implementation of the project will improve local property values.

(E) The degree to which implementation of the project will result in the development of new parks.

(F) The extent to which the project may have a beneficial effect on the construction of new schools.

(G) The extent to which the project will result in the construction of affordable inner-city housing.

(H) The potential for the project to have a beneficial impact on existing local and regional infrastructure or projected infrastructure needs, or otherwise promote infill development.

(5) The economic viability of the project, including, but not limited to, an analysis of the current value of the property as compared to its projected value after all necessary response actions have been completed.

(6) The ability of the loan applicant to successfully perform the response action at the site and repay the loan if funding is provided.

(7) The geographic location of the project, taking into consideration the number and amounts of loans approved for projects located in that area, as compared to those approved for other needy areas throughout the state.

(8) The degree of likelihood that the response action would not be completed if a loan pursuant to Section 25395.22 is not made, including whether any necessary response action is already being paid for by a responsible party pursuant to an administrative order, an agreement issued or entered into with a federal, state, or local agency, a judicial order, or a consent decree.

(9) The ability to obtain conventional financing absent a loan under this program.

25395.24. (a) The department may approve all, or part of, a loan request pursuant to Section 25395.23, except the maximum amount of a loan approved pursuant to Section 25395.23 shall not exceed two million five hundred thousand dollars (\$2,500,000).

(b) The department shall not approve a loan pursuant to Section 25395.23 if the total debt against the eligible property subject to the release or threatened release of a hazardous material on which the response action will be taken exceeds 80 percent of the estimated value of the property after all necessary response actions are complete.

25395.25. Upon the approval of a loan pursuant to Section 25395.23, the loan recipient shall do both of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than five years.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money first to satisfy the loan.

(3) The agreement shall require that if the loan recipient is not the owner of the property, but intends to purchase the property before the loan is satisfied, the purchase price of the property shall not exceed its estimated current fair market value, not taking into consideration any necessary response action that may be conducted on the property.

(b) Enter into an agreement with the department for the oversight and approval of the response action at the site. This agreement shall be provided to the department before the department may release any loan funds to the loan recipient.

25395.26. (a) A loan approved pursuant to Section 25395.23 shall be secured by the property subject to the release or threatened

release of the hazardous material on which the response action will be taken. The department shall obtain an appropriate security interest in the property and this security interest shall have first lien priority. The department shall not subordinate this lien. The department may foreclose on property that is subject to a security interest pursuant to this section. Any funds received through a foreclosure or through the enforcement of any other security interest pursuant to this article shall be deposited in the account.

(b) The state, the secretary, the department, and the account are not liable under any state or local statute, regulation, or ordinance because the department holds the security interest identified in subdivision (a) or because the department acquired property through foreclosure or its equivalent in satisfaction of a loan issued pursuant to this article.

(c) Chapter 6.96 (commencing with Section 25548) does not apply to the state, the secretary, the department, the agency, or the account with regard to a loan secured pursuant to subdivision (a).

(d) (1) Notwithstanding any other provision of law, no approval or review shall be required from the Department of General Services to obtain any security interest or exercise any rights, including, but not limited to, foreclosure, under any security interest or other agreement made pursuant to this article.

(2) The acquisition of a property pursuant to this article through foreclosure or its equivalent is not subject to Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code.

(3) The department shall promptly dispose of any property acquired through the exercise of any security interest pursuant to this article at the property's current market value and the disposal of this property is exempt from Section 11011.1 of the Government Code and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) This article shall not be construed to limit, extend, or affect local land use and zoning authority.

25395.27. (a) Any response action carried out under this article shall be conducted in accordance with the requirements of this chapter and Chapter 6.65 (commencing with Section 25260). However, for purposes of Section 25262, the department shall be the administering agency for any site that is the subject of a loan under this article and no person may request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260).

(b) For sites that are the subject of a loan under this article, all references in this chapter to a hazardous substance shall be deemed to be a reference to a hazardous material.



(c) This chapter shall apply to a site that is the subject of a loan under this article, regardless of whether the site is on the list created pursuant to Section 25356.

(d) Except as provided in Section 25264, this article shall not be construed to limit the authority of the department to take any action otherwise authorized under any other provision of law.

(e) The department shall post, and update at least monthly, a list of loan applications received pursuant to this article on the department's Internet web site. The list shall include the name of the applicant, the location of the property that is the subject of the loan application, and a contact at the department for further information.

25395.29. The department may adopt regulations to implement this article as emergency regulations. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

25395.30. The following persons are not eligible to apply for a loan under this article:

(a) A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under Section 25395.13.

(b) A person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering.

(c) A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site.

(d) A person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to the secretary under this article.

25395.31. The rate of interest to be applied to loans made pursuant to this article shall be the same rate earned on investments in the Surplus Money Investment Fund during the loan repayment period. If a loan recipient defaults on a loan, the rate of interest to be applied to the loan shall be 10 percent from the date of default, or

whatever greater rate is reflected in the agreement entered into pursuant to subdivision (a) of Section 25395.25.

25395.32. On or before January 10 of each year, the secretary shall report to the Joint Legislative Budget Committee and to the chairs of the appropriate policy committees of the Senate and the Assembly, and shall post on the Internet web site of the agency, all of the following:

(a) The number and dollar amount of loans approved pursuant to Section 25395.21, the number and dollar amount of those loans that have been repaid, and, the number and dollar amount of those loans that are in default.

(b) The number and dollar amount of loans waived pursuant to subdivision (f) of Section 25395.21.

(c) The number and dollar amount of loans approved pursuant to Section 25395.23, the number and dollar amount of those loans that have been repaid, and the number and dollar amount of those loans that are in default.

(d) The number of preliminary endangerment assessments completed pursuant to agreements entered into under this article.

(e) The number of sites where necessary response actions have been completed pursuant to agreements entered into under this article.

SEC. 24. (a) The sum of eighty-five million dollars (\$85,000,000) that was transferred pursuant to Section 13 of Chapter 144 of the Statutes of 2000 to the Cleanup Loans and Environmental Assistance to Neighborhoods Account, which was established pursuant to Section 25395.20 of the Health and Safety Code, as added by Chapter 144 of the Statutes of 2000, is hereby transferred to the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 25395.20 of the Health and Safety Code, as added by this act, for expenditure to implement Article 8.5 (commencing with Section 25395.20) of Chapter 6.8 of Division 20 of the Health and Safety Code, as added by this act and to provide administrative support to the Secretary for Environmental Protection and the Department of Toxic Substances Control to implement that article.

(b) Of the amount transferred to the Cleanup Loans and Environmental Assistance to Neighborhoods Account pursuant to subdivision (a), two million dollars (\$2,000,000) is hereby appropriated from that account to the Department of Toxic Substances Control for the implementation of Article 8.5 (commencing with Section 25395.20 of Chapter 6.8 of Division 20 of the Health and Safety Code in the 2000–01 fiscal year.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public health and safety, and the environment by expeditiously cleaning up property contaminated with hazardous substances, it is necessary that this act take effect immediately.

